

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

ASSUNCAO BROS., INC.,

Debtor.

Chapter 11 (Subchapter V)

Case No. 22-16159

Judge: Hon. Christine M. Gravelle

Hearing Date: March 21, 2023 at 2:00 p.m.
(Prevailing Eastern Time)

**SECOND INTERIM APPLICATION OF FOX ROTHSCHILD LLP AS COUNSEL TO
THE DEBTOR FOR ALLOWANCE OF COMPENSATION FOR PROFESSIONAL
SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED
FOR THE PERIOD FROM NOVEMBER 1, 2022 THROUGH JANUARY 31, 2023**

Fox Rothschild LLP (“Fox Rothschild”), as counsel to Assuncao Bros., Inc., the above-captioned debtor and debtor-in-possession (the “Debtor”), submits this application (the “Application”) pursuant to 11 U.S.C. § 330, Fed R. Bankr. P. 2016, and D.N.J. LBR 2016-1, as its second interim fee application for compensation for services rendered and reimbursement of expenses for the period of November 1, 2022, through January 31, 2023 (the “Fee Period”). By this Application, Fox Rothschild seeks allowance and payment of compensation in the amount of \$83,364.00 for services rendered by Fox Rothschild during the Fee Period and allowance and reimbursement of its actual and necessary expenses in the amount of \$94.70 for the Fee Period. In

support of the Application, Fox Rothschild submits a Certification of Counsel attached hereto as **Exhibit A**, and respectfully represents as follows:

BACKGROUND

1. On August 3, 2022 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Subchapter V of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), commencing the above-captioned chapter 11 case in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

2. On August 26, 2022, Fox Rothschild filed *Debtor’s Application for Entry of an Order Authorizing the Employment and Retention of Fox Rothschild LLP as Counsel to the Debtor Nunc Pro Tunc to the Petition Date* (the “Retention Application”) [Doc. No. 90]. Also on that date, Fox Rothschild filed a Revised Disclosure of Compensation of Attorney for Debtor in which Fox Rothschild disclosed, that it had received a retainer in the amount of \$67,690.00 (the “Retainer”) from the Debtor prior to the Petition Date.

3. The Retention Application sets forth the compensation arrangement between Fox Rothschild and the Debtor, whereby Fox Rothschild would charge for its legal services on an hourly basis in accordance with its ordinary and customary hourly rates in effect on the date such services are rendered and for out-of-pocket expenses. Fox Rothschild would then apply to the Court for allowance of compensation and reimbursement of out-of-pocket expenses incurred after the Petition Date, subject to Court approval and in accordance with the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of the United States Bankruptcy Court for the District of New Jersey, the applicable Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 (the

“U.S. Trustee Guidelines”), and any orders entered in this case governing the compensation and reimbursement of professionals for services.

4. On October 12, 2022, the Court entered an *Order Approving Retention of Fox Rothschild LLP as Counsel to the Debtor Effective August 3, 2022* (the “Retention Order”) [Doc. No. 137].

5. Fox Rothschild has worked diligently through this case as the Debtor’s bankruptcy counsel. Fox Rothschild worked hand-in-hand with the Debtor’s financial advisor, KCP Advisory Group, LLC (“KCP”), throughout the case. Among other things, Fox Rothschild prepared and filed the Debtor’s Subchapter V Plan of Reorganization (the “Plan”), which once approved will allow the Debtor to ensure its most vital pre-petition obligations can be met and ensure that the Debtor had a chance to continue to operate following its bankruptcy filing and reorganize, as well as to provide a payout to creditors. During the Fee Period, Fox Rothschild provided legal guidance to the Debtor as it continued its business operations.

**FOX ROTHSCHILD’S APPLICATION FOR COMPENSATION
AND REIMBURSEMENT OF EXPENSES**

6. This is Fox Rothschild’s second interim application for compensation filed in this Case.

7. On December 2, 2022, Fox Rothschild filed its First Interim Fee Application [Doc No. 158]. On January 3, 2023, Fox Rothschild was awarded fees of \$214,957.50 and expenses of \$7,475.93 in connection with the First Interim Fee Application. Fox Rothschild was also authorized to apply the balance of the Retainer to its awarded fees and expenses. Fox, at the request of the United States Trustee, agreed to a hold back of \$5,000.00 of its awarded fees pending the Court’s approval of a final fee application and subject to the United State Trustee’s right to object to same.

JURISDICTION, VENUE, AND STATUTORY BASIS

8. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Application is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 328 and 330 of the Bankruptcy Code, Rule 2016 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules 2016-1 and 2016-3.

**SUMMARY OF SERVICES RENDERED AND EXPENSES
INCURRED DURING THE FEE PERIOD**

9. The compensation requested in this Application is reasonable based on the nature and extent of the services rendered, the size and complexity of this Case, the time, labor required and other related factors.

10. As described in further detail below, during the Fee Period, the professional services performed by Fox Rothschild were necessary and appropriate to assist the Debtor in this case and were performed in an expeditious and efficient manner. As such, Fox Rothschild submits that the compensation sought herein is reasonable within the meaning of section 330 of the Bankruptcy Code.

11. As set forth in the Application cover sheet submitted herewith, Fox Rothschild rendered a total of 135.90 hours of professional services during the Fee Period, for which it seeks compensation of \$83,364.00 and \$94.70 incurred in out-of-pocket expenses which were “actual, necessary expenses” in connection with rendering the professional services described herein. The blended hourly rate of for professional services during the Fee Period is \$613.42.

12. To apprise the Court of the legal services rendered during the Fee Period, Fox Rothschild sets forth the following summary. This summary is intended only to highlight the

categories of services to which Fox Rothschild devoted substantial time and attention on behalf of the Debtor.

A. Asset Analysis and Recovery (A)

Time spent in this category included discussions with relevant parties regarding a new Turnpike project, review of claims for salvage ABECO vehicles and correspondence with respect thereto.

Fees: \$780.00; Hours: 1.4

B. Assumption/Rejection of Leases and Contracts (AA)

Fox Rothschild communicated internally and with the Debtor regarding the various contracts for the Debtor's projects. Additionally, Fox Rothschild analyzed the executory contracts of the Debtor and counseled the Debtor regarding various contracts and possible assumption of same.

Fees: \$1,172.00; Hours: 1.4

C. Asset Disposition (B)

Fox Rothschild reviewed pleadings and negotiated with various parties in interest regarding the enforcement of the sale order.

Fees: \$974.00; Hours 1.5

D. Business Operations (C)

This category encompasses a wide variety of activities and includes, but is not limited to the following: communicating with various counsel regarding the Debtor's insurance policies, negotiations and preparation of Consent Order with the subcontract with Schiavone; communications and with NJ DOT and others regarding review of DBE status.

Fees: \$6,244.00; Hours: 10.0

E. Court Appearance (CA)

Fox Rothschild attended and prepared for a Status Conference scheduled by the Court.

Fees: \$912.00; Hours: 1.6

F. Case Administration (D)

Fox Rothschild engaged in a variety of necessary administrative tasks. These tasks included, but were not limited to communications with interested parties regarding status of the case and other tasks and services not generally related to another category.

Fees: \$495.00; Hours: 0.6

G. Claims Administration and Objections (E)

Fox Rothschild engaged in a review of the Debtor's contracts and communications with interested parties regarding same. In addition, Fox Rothschild reviewed and analyzed claims filed against the Debtor and communications with the Debtor, KCP and other parties in interests regarding same.

Fees: \$6,644.00; Hours: 10.5

H. Fee/Employment Applications (G)

During the Fee Period, Fox Rothschild prepared its First Interim Fee Application, as well as the application of KCP Advisory Group, LLC as the Debtor's financial advisor and certain related documents. Also included in this category is communications with the Office of the United States Trustee regarding its objections to the Fee Applications of Fox Rothschild and KCP Advisory Group, LLC.

Fees: \$10,013.00; Hours: 20.4

I. Reporting (GG)

Fox Rothschild assisted the Debtor and its financial advisor KCP with all reporting requirements throughout the Fee Period. This also included review and filing of Monthly Operating Reports and preparation and filing of Status Reports.

Fees: \$710.00; Hours: 1.2

J. Litigation (Other than Avoidance Litigation) (J)

This category also includes time spent with regard to documentation productions in connection with the Quinto Action.

Fees: \$2,438.00; Hours: 3.8

K. Avoidance Action Litigation (K)

Fox Rothschild analyzed potential avoidance claims in connection with sale proceeds of ABECO vehicles as well as potential insider avoidance claims. Fox Rothschild communicated with various interested parties regarding same.

Fees: \$1,653.00; Hours: 2.9

L. Plan and Disclosure Statement (M)

This category includes time spent in connection with a formulation and preparation of the Debtor's Plan, including communications and meetings with the Debtor, KCP and other interested parties regarding plan options and strategy. Fox Rothschild analyzed claims filed against the Debtor for treatment under the plan and drafted and filed a detailed Plan. It worked with the Debtor's professionals to ensure accurate information and feasibility. Fox Rothschild also prepared ballots for accepting and rejecting the Plan and explanatory cover letters to be sent to creditors. The deadline for objections to be filed to confirmation of the Plan is February 28, 2023. A hearing to consider confirmation of the Plan is scheduled for March 7, 2023

Fees: \$46,403.00; Hours: 72.1

M. Relief from Stay Proceedings (N)

Fox Rothschild negotiated with counsel for Theresa Kraemer and Chrysler Capital regarding motions filed for relief from the automatic stay. Fox Rothschild prepared and filed Applications, Stipulations and Consent Orders with regard to same.

Fees: \$4,926.00; Hours: 8.5

13. In addition to the foregoing, Fox Rothschild incurred out-of-pocket expenses during the Fee Period in the amount of \$94.703 which were "actual, necessary expenses" in connection with rendering the professional services described above pursuant to section 330(a)(1)(B) of the Bankruptcy Code. Such expenses include, but are not limited to court hearings and court solutions appearances, parking, photocopying, postage, legal research, and secretarial charges. Fox Rothschild has made every effort to minimize the expenses in this matter by utilizing the most cost-efficient methods of communication consistent with the necessary time restraints.

COMPLIANCE WITH GUIDELINES

14. Fox Rothschild believes that this Application substantially complies with the local rules of this Court and the U.S. Trustee Guidelines. To the extent there has not been material compliance with any particular rule or guideline, Fox Rothschild respectfully requests a waiver or an opportunity to cure.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, pursuant to sections 328 and 330 of the Bankruptcy Code, Fox Rothschild respectfully requests (i) allowance of compensation for professional services rendered as counsel to the Debtor during the Fee Period in the amount of \$83,364.00; (ii) reimbursement of actual and necessary expenses incurred by Fox Rothschild during the Fee Period in the amount of \$94.70; (iii) payment of the outstanding fees and expenses due to Fox Rothschild; and (iv) such other and further relief as this Court deems just and proper.

DATED: February 17, 2023

FOX ROTHSCHILD LLPs
Counsel for the Debtor and Debtor-in-Possession

By: /s/ Joseph J. DiPasquale
JOSEPH J. DIPASQUALE